

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ARRELLO BARNES,

Plaintiff,

DECISION AND ORDER

07-CV-6197L

v.

FEDELE, et al.,

Defendants.

By letter dated February 6, 2009, plaintiff seeks “discovery” before responding to defendants’ motion to dismiss which was filed pursuant to FED. R. CIV. P. 12(b). The motion for discovery is denied. Unlike a summary judgment motion, a motion to dismiss speaks just to what is contained in the complaint, and no information, outside of that, may be considered by the court in deciding the motion.

Plaintiff must respond to the defendant’s motion to dismiss on or before April 1, 2009.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 25, 2009.